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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1957

No. 868.

In the Matter of

AQUA HOTEL CORPORATION (in reorganization),

Aqua Hotel Corporation vs. McLaughlin (Kaye).

PETITION FOR REHEARING.

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Comes now Aqua Hotel Corporation and respectfully petitions for rehearing on the following grounds:

I.

The Court has overlooked fundamental questions of bankruptcy law, which have not been, but should be decided by this honorable court in the supervision of its administration of bankruptcy appeals.

(a) The decision of the court below and this court's denial of certiorari in effect denies appellants due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) The decision of the court below erroneously construes the law regarding the right to jury trials, under the circumstances of this case.

Appellants were the only ones who submitted plans of reorganization to the trustee. The trustee submitted the plans to the district court with a recommendation for

their rejection. The matter came on for hearing, and the trial judge, continuing all other matters to a future date for hearing, nevertheless signed an order rejecting the proposed plans of arrangement. This order was never served upon appellants and they did not have any notice of it. Nevertheless the Circuit Court held that on appeal from the order of adjudication in bankruptcy, our notice of appeal, filed forty-one days after this unnoticed and unserved order and judgment was signed was TOO LATE for review on appeal.

This court has frequently said that notice and an opportunity to be heard are the first essentials of due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

In re Oliver, 333 U. S. 257;

United States v. Hayman, 342 U. S. 205, 220;

Snyder v. Massachusetts, 291 U. S. 97.

The appellants, having been denied notice, lost something indispensable. Where an appeal is of right (Bankruptcy Act, Secs. 24, 25), a denial thereof is a denial of due process.

Cole v. Arkansas, 333 U. S. 196.

(c) The failure of the court to accord a jury trial on demand, has also never been passed upon by this court.

In the circumstances of this case, the trial court having refused consideration of reorganization, or the right to submit the proposed plans to the creditors, the declaration and order adjudicating the corporation bankrupt was in effect involuntary. As such, it was entitled to a trial by jury, on the question of its insolvency.

Bankruptcy Act (11 U. S. C. 42), Sec. 19(a).

We preserve all other points previously urged as though fully set forth herein in the event the court grants this petition for rehearing.

MORRIS LAVINE,

Counsel for Appellants, Patricia Springer, John Cashen, Creditors Aqua Hotel Corporation.

Certificate of Counsel.

I, Morris Lavine, Counsel for Appellants, hereby certify that the foregoing petition for rehearing is filed in good faith and not for the purpose of delay, and that petitioner believes the grounds herein are meritorious. He further certifies that the matters presented are important questions of notice required under the Fifth Amendment and are restricted to the grounds above specified.

MORRIS LAVINE,

Counsel for Appellants, Patricia Springer, John Cashen, Creditors Aqua Hotel Corporation.